



IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.12071 of 2024

***Manoj Kumar Digal @ Manoj
Digal***

.....

Petitioner

Represented By Adv. –
Mr. Dibyajyoti Sahoo

-versus-

State Of Odisha

.....

Opposite Party

Represented By Adv. –

Smt. Siva Mohanty, ASC

CORAM:

THE HON'BLE MR. JUSTICE ADITYA KUMAR MOHAPATRA

ORDER

05.11.2024

Order No.

- 01.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. Heard learned counsel for the Petitioner and learned Additional Standing Counsel appearing for the Opposite Party-State.
 3. This is an application under section 438 of Cr.P.C. filed by the Petitioner for pre-arrest bail.
 4. The Petitioner is seeking pre-arrest bail in connection with C.T. (Spl.) Case No.14 of 2024, arising out of Baliguda P.S. Case No.15 of 2024, pending before the Court of the learned Special Judge, Baliguda, for alleged commission of offence punishable under Section 20(b)(ii)C of the N.D.P.S. Act, 1985.
 5. It is stated by the learned counsel for the Petitioner that the present Petitioner is the owner of the vehicle which was involved in the offence punishable under provisions of the N.D.P.S. Act. He further contended that initially the Petitioner was not named in the



F.I.R. He further contended that although in the meantime investigation has been concluded and final charge sheet has been filed, the name of the Petitioner does not appear in the charge sheet. He further contended that since the Petitioner has been summoned by the Police for the purpose of investigation on the basis of the co-accused statement, the Petitioner apprehends his arrest in connection with the present case by the Police. Therefore, the Petitioner has approached this Court by filing the present application for his release on pre-arrest bail. Learned counsel for the Petitioner further contended that although the Petitioner is the owner of the vehicle which has been seized in connection with the present case, however, he had no knowledge about the illegal transportation of the contraband articles. He further contended that neither the present Petitioner present at the spot nor anything has been recovered from his possession. Therefore, the bar under Section 37 of the NDPS Act would not be attracted to the facts of the present case. Further referring to the judgment of the Hon'ble Supreme Court in the case of *Tofan Singh v. The State of Tamil Nadu*, reported in (2013) 16 SCC 31, learned counsel for the Petitioner submitted that any statement made by the co-accused cannot be used as evidence against the present Petitioner. He further contended that the Petitioner does not have any similar criminal antecedent. On such ground, learned counsel for the Petitioner submitted that the Petitioner be released on bail on any stringent terms and conditions which the Petitioner shall abide by while on pre-arrest bail.

6. Learned counsel for the State, on the other hand, opposed the release of the Petitioner on bail on the ground of gravity and seriousness of the allegation made against the Petitioner in the F.I.R. He further contended that it is an established fact that the Petitioner is



the owner of the vehicle in which contraband articles were was transported. He further submitted that the Petitioner only summoned to examine his involvement in the present case. Therefore, there is no apprehension of arrest. Accordingly, the present pre-arrest bail application is not maintainable.

7. Considering the submissions made by the learned counsel appearing for the respective parties and on careful examination of the materials on record, this Court, although is not inclined to release the Petitioner on pre-arrest bail, however it is directed that the event of Petitioner surrenders before the Court in seisin over the matter within a period of three weeks from today and move an application for bail, the Court in seisin of the matter shall do well to consider and dispose of the bail application of the Petitioner on the same day by taking into consideration the fact that the bar under Section 37 of the NDPS Act would not be attracted to the facts of the present case. While considering the bail application of the Petitioner, the trial court shall also keep in view the law laid down by Hon'ble the Supreme Court in the case of *Tofan Singh* (supra).

8. With the aforesaid observation and direction, the ABLAPL is disposed of.

(Aditya Kumar Mohapatra)
Judge